Mill's *On Liberty*

Chapters IV and V:

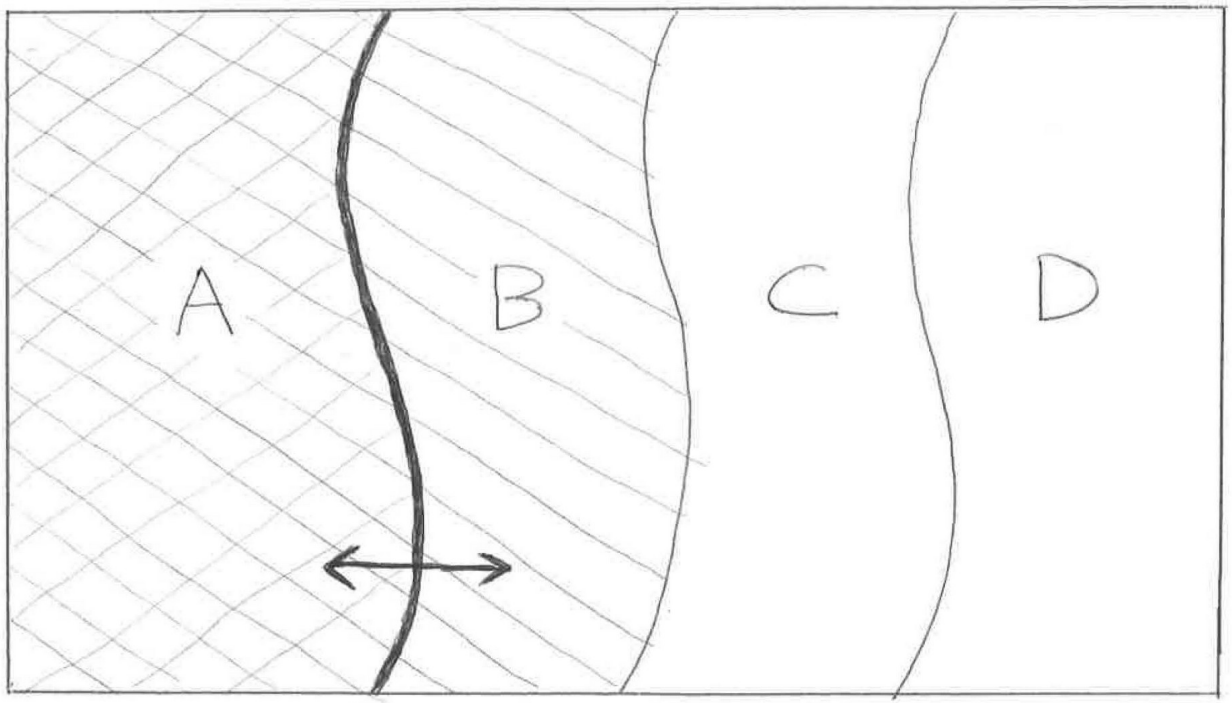
Mapping* the Boundary between Individual Liberty and Social Control

INDIVIDUAL LIBERTY:

No harm or harm only to self.

SOCIAL CONTROL:

Harm to others.



A: wicked thoughts; fidgeting

B: { harm to others less than (cost) of suppression (e.g., pink houses) }

C: uncharitableness; nastiness (social sanctions)

D: theft; assault (legal sanctions)

What Counts as “Harm” (14)?

- The first half of Chapter IV, which should answer this question, is often *maddeningly vague.* For example:
  - Mill speaks of “certain interests” that conduct must respect without really defining *what those interests are* (83).
  - He talks at length about the sanctions appropriate to odious but self-regarding behavior **vs.** behavior that is genuinely injurious to others, but he offers little precise guidance about *distinguishing between the two kinds of behavior* (86-7).
  - He argues that “whenever…there is a definite damage, or a definite risk of damage, either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law” (91). But what constitutes *damage*? Hurt feelings? Moral offense? Embarrassment? Annoyance?
- These questions indicate a problem with Mill’s initial statement of the Principle of Liberty: *it **excludes** from protection conduct “which concerns others,” but given the interconnectedness of humanity, this may exclude nearly **all** conduct from protection (14).* Mill himself notes this objection (88-90), but his response is initially vapid, as the “damage” quote above indicates.

A Bold, Heterodox Move

- Finally, in the middle of Chapter IV, Mill takes a controversial stand:

"There are many who consider as an injury to themselves any conduct which they have a distaste for, and resent it as an outrage to their feelings; as a religious bigot, when charged with disregarding the religious feelings of others, has been known to retort that they disregard *his* feelings, by persisting in their abominable worship or creed. *But there is* ***no parity*** *between the feeling of a person for his own opinion, and the feeling of another who is offended at his holding it;* ***no more than between the desire of a thief to take a purse, and the desire of the right owner to keep it."*** (93)

- The first part of the highlighted sentence claims there is "no parity" between the two feelings, suggesting that the former is larger or more important than the latter. So far, this is wholly consistent with the *quantitative* hedonism of a Bentham or Sidgwick.
- He then draws an analogy between *these* feelings and the respective feelings of a purse-owner and a purse-thief. *But in these settings, we typically* ***disregard*** *the feelings of the thief.* **(Explain.)** Thus, what Mill *seems* to be saying is that a feeling of *offense*—be it religious, moral, or otherwise—is ***properly disregarded*** and *not* to be counted as "damage" to the one offended. **Uncharitable reading?** But….

Sidgwick's Reply

- Sidgwick's later response to this passage and similar ones is telling:

"I do not see how it is *from a **utilitarian** point of view* justifiable to say broadly with J.S. Mill that such *secondary* injury to others, if merely 'constructive or presumptive,' is to be **disregarded** in view of the advantages of allowing free development of individuality; for if the injury feared is great, and the presumption that it will occur is shown by experience to be strong, the *definite* risk of evil from the withdrawal of moral sanction must…outweigh the *indefinite* possibility of loss through the repression of individuality in one particular direction." (ME 477-8)

- As the examples that follow make clear, Mill disregards these "injuries" in order to ***make space for individual freedom*** *(see the **map**)*—and his *qualitative* hedonism (*viz.* the rankings of "competent judges") permits him to do precisely this, contra Sidgwick. {Again, *letter **vs.** spirit*.}
- Whether he's ignoring religious offense, envy, or moral outrage (e.g., against polygamy), his overriding concern is to *prevent social disapproval from stifling individual spontaneity and "experiments of living," which are prerequisites for **human development and progress**.*

Applications

- In Chapter V, Mill applies the Principle of Liberty to a host of public-policy issues, leading him to speak in favor of, *inter alia:*
  - **competition**, especially in labor & product markets and in educational testing & provision (104-5, 117-9);
  - **citizen participation** in *local* government (121-2).
- What is striking about these specific two areas of application is the up-front role played by Mill's *perfectionism*, to the point of ***minimizing welfarist considerations*** (e.g., *losses to the losers* in the first case {WTA markets [Frank/Cook]}, *organizational inefficiencies* in the second).
- There is much to say about the other applications, but I will focus on **two** of the most controversial.

Justifiable Paternalism

- I've already noted that the Principle of Liberty is *strongly anti-paternalistic*. That being said, Mill does make *some* room for paternalism ***towards adults***. How much is open to question.
- Mill says that forcibly stopping a man from crossing an unsafe bridge ***if there's no time to warn him*** is **not** a violation of the Principle of Liberty, "for liberty consists in *doing what one desires*, and he doesn't desire to fall into a river" (106-7).
- He goes on to say that there is no justification for preventing a man from incurring risks "unless he is a *child*, or *delirious*, or *in some state of excitement or absorption* ***incompatible*** *with the full use of the reflecting faculty*." (107)
- One can infer from these statements that the applicability of the Principle of Liberty is *conditional* on individuals being:
  - ✓**informed**,
  - ✓**mature**,
  - ✓**sober**, and
  - ✓**at least *potentially* fully reflective**.

Justifiable Paternalism, cont.

- Does this carve out a *large* exception in the Principle of Liberty? It appears to be ***small***. (But see **slavery:** 113-4.)
- For example, review what Mill has to say about **alcohol:**
  - He condemns policies making alcohol "impossible or [even] difficult to obtain" (98-101, 106; e.g., ***"local option," "blue laws," etc., in the American South***).
  - Drunkenness punishable **only** if an individual has a ***previous conviction*** **either** of violence **or** of failure to discharge legal duties (e.g., child support) **due to drink** (108; ***DUI/DWI?***).
  - He supports regulations to prevent alcohol providers from *"promoting intemperance,"* which is in their interest (111; ***legal liability for bartenders, controls on advertising?***)
  - The state may **not** "indirectly discourage" drinking ***for paternalistic reasons*** (e.g., "sin taxes") but may do so in order to ***raise revenue efficiently*** (e.g., inverse-elasticity rule [**beer** {0.3}]) or ***reduce negative externalities*** (111-3).

Regulating Procreation

"The laws which…***forbid marriage*** unless the parties can show that they have the ***means of supporting a family*** do **not** exceed the legitimate powers of the State…. The current ideas of liberty, which bend so easily to *real* infringements of the freedom of the individual in things which concern only himself [**previous slide, 1st list item**], would repel the attempt to put any restraint upon his inclinations when the consequence of their indulgence is *a life or lives of wretchedness and depravity of the offspring, with manifold evils to those sufficiently within reach to be in any way affected by their actions*." (120)

- Mill still has the power to shock here: the apostle of liberty is ***open*** to *restricting the procreative liberties of adults* in order to **prevent harm *to both the children themselves and third parties—including presumably taxpayers***. (Cf. China: 1 to ∞)
- **How might it be effected?** Parental *screening* or *licensing*?
- **Would it be advisable?** Isn't this the kind of "prior restraint" he condemned with regard to alcohol? **But: *other* licensing**.